

**FREEZOUT LAKE WILDLIFE MANAGEMENT AREA  
MANAGEMENT AGREEMENT**

**BETWEEN THE**

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION**

**AND**

**THE STATE OF MONTANA  
FISH, WILDLIFE AND PARKS**

**FOR THE**

**ADMINISTRATION OF RECLAMATION LANDS**

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**Exhibits:**

- Exhibit A - Reclamation Land within Freezout Lake Wildlife Management Area
- Exhibit B - Reclamation Land-Use Stipulation
- Exhibit C - Environmental and Archeological Requirements
- Exhibit D - Equal Opportunity Requirements
- Exhibit E - Title VI, Civil Rights Act of 1964
- Exhibit F - Summary of Reporting Requirements

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This Management Agreement (“Agreement”), made this \_\_\_\_ day of \_\_\_\_\_ 2018, in accordance with the Reclamation Act of June 17, 1902, (32 Stat. 388) and acts amendatory thereof and supplementary thereto; the Federal Water Project Public Recreation Act of July 9, 1965, P.L. 89-72 (79 Stat. 213) as amended; the Water Law Enforcement Act, P.L. 98-552, 42 U.S.C. Sec. 1962d-19; the Reclamation Management Act of 1992, P.L. 107-69, 43 U.S.C., Sec. 373b as amended; between the United States of America, acting through the Department of the Interior, Bureau of Reclamation (“Reclamation”), represented by the officer executing this instrument on its behalf, successor officers or duly authorized representatives; and, Montana Fish, Wildlife and Parks (“FWP”).

WITNESSETH, THAT:

WHEREAS, Freezout Lake is a multipurpose development receiving surplus irrigation water and irrigation waste water from Reclamation’s Sun River Project, Greenfields Irrigation District, for habitat and wildlife benefit, and conservation purposes;

WHEREAS, the real property (“Reclamation Land”) shown on Exhibit A, attached hereto and incorporated herein, is owned, administered, and maintained by Reclamation for Project purposes, is identified within Freezout Lake Wildlife Management Area and shall be the only lands associated with this Agreement;

WHEREAS, FWP desires to manage the Reclamation Land within Freezout Lake Wildlife Management Area for public recreation, wildlife, and other resource uses; and,

WHEREAS, Reclamation desires to permit FWP to undertake such management pursuant to the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, Reclamation and FWP agree as follows:

1. TERM OF AGREEMENT.

The term of this Agreement shall commence on the date written on Page 1 of this Agreement and continue for a period of 20 years unless sooner terminated as described herein. Two

years prior to the expiration of this Agreement, FWP shall notify Reclamation in writing of its desire to either enter into a new agreement for the next 20 years, or to discontinue its management responsibilities upon expiration of this Agreement.

2. MISCELLANEOUS PROVISIONS.

Subject to the terms, conditions, limitations, exceptions, and reservations contained in this Agreement, FWP hereby accepts responsibility for all planning, development, construction, management, and operation and maintenance activities associated with Reclamation Land within Freezout Lake Wildlife Management Area. Such responsibilities also include the operation, maintenance, and replacement of any public recreation facilities.

- A. FWP will, within the limits of its authority, adopt and enforce rules and regulations for public recreation use of the Freezout Lake Wildlife Management Area as are necessary and desirable to protect the health and safety of persons using the area, for the preservation of law and order, and for the protection of resources and facilities. Said rules and regulations will, to the extent possible, be consistent with applicable Federal, State, and local laws, rules and regulations, Executive Orders, and Reclamation policies currently in place, or as may be adopted in the future.
- B. Prior to any ground-disturbing or construction activities not identified in the Land Management Plan (Article 7), FWP shall coordinate with Reclamation on all site planning, construction, management, operation, and maintenance activities pursuant to this Agreement. Reclamation shall retain approval authority for all proposed projects and their associated engineering designs not identified and planned in the Land Management Plan. The Land Management Plan described under Article 7 is considered sufficient notice for all activities and projects described within the plan.
- C. FWP shall manage Reclamation Land within Freezout Lake Wildlife Management Area consistent with authorized Project purposes of the Sun River Project.
- D. FWP shall manage, operate, and maintain all public recreation facilities in good repair at its sole expense.
- E. FWP shall manage, operate, and maintain all signs, boundary markers, posts, and any informational markers in good repair at its sole expense.
- F. Any permits that are issued on Reclamation lands by the FWP shall comply with Exhibit "B", entitled Reclamation Land Use Stipulation, which Exhibit is incorporated herein by reference and made a part hereof.
- G. Upon receiving approval from Reclamation on the Land Management Plan, FWP may construct, replace, add to, or alter public use facilities on Reclamation Land within Freezout Lake Wildlife Management Area.
- H. All applicable contracts issued by FWP, its contractors, or permittees relative to this Agreement for activities carried out on Reclamation Land within Freezout Lake

Wildlife Management Area shall include the Equal Opportunity Requirements set forth in Exhibit "D" attached hereto and incorporated herein.

- I. FWP agrees that it and its employees shall not discriminate because of race, color, age, religion, sex, or national origin against any person by refusing to furnish such person any accommodation, facility, service, or privilege offered to or enjoyed by the general public. FWP or its employees shall not publicize accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, color, age, religion, sex, or national origin. FWP agrees to include and require compliance with a provision similar to the foregoing provision in any contract made with respect to the operations to be carried out hereunder.
- J. This Agreement is subject to Title VI, Civil Rights Act of 1964 (78 Stat. 241) and Interior Regulations issued pursuant thereto in 43 CFR 17, as modified or amended, and set forth in Exhibit "E" attached hereto and incorporated herein.

3. RECLAMATION USE PARAMOUNT.

The rights of FWP under this Agreement are subordinate to the rights of Reclamation, its agents, employees, or assigns, relating to use of Reclamation Land within Freezout Lake Wildlife Management Area. Public use of the premises may be restricted whenever Reclamation determines that such restriction is necessary in the interest of Project operations, public or resource safety, or national security. Reclamation reserves the right of its officers, agents, and employees, at all times, to have unrestricted access and ingress to, passage over, under, on, across, and egress from all Federal lands, to make investigations of all kinds, dig test pits and drill test holes, to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever.

4. ADJUSTMENT TO LAND AREAS SHOWN ON EXHIBIT A.

If future needs arise which Reclamation determines will require use of all or portions of Reclamation Land within Freezout Lake Wildlife Management Area, FWP shall be so notified by Reclamation. After the parties have consulted, Reclamation shall give full consideration to minimizing any resulting adverse effects relating to FWP's ability to manage Reclamation Land within Freezout Lake Wildlife Management Area. In the event Reclamation's need for all or portions of Reclamation Land within Freezout Lake Wildlife Management Area makes it impractical for FWP to continue its management function, this Agreement will terminate as provided in Articles 18 and 19. Upon termination FWP shall be solely responsible for bearing any of its costs associated with termination, including removal of improvements, loss of wages, revenues, salaries, or benefits to its employees, or for any other losses it may sustain as a result of the termination of this Agreement.

5. SOIL, WATER AND NATURAL RESOURCES.

FWP shall take all reasonable measures necessary to cooperate in soil and water conservation by minimizing siltation and erosion; protect land and water resources; prevent and suppress wildfire; protect against the introduction and spreading of noxious weeds and other pests, including domestic or feral animals which are detrimental to natural

resources, agriculture or public health and safety; adhere to all state regulations and recommended measures for prevention and spread of Aquatic Invasive Species; and implement fish and wildlife enhancement practices.

FWP shall include suitable provisions for such controls in all licenses and permits issued, or contracts entered into by FWP with others. To the extent practicable, Reclamation and FWP will cooperate on water, riparian and terrestrial management issues to enhance fish and wildlife habitats on Reclamation Land within Freezout Lake Wildlife Management Area.

6. RESERVATIONS.

The privileges herein granted to FWP are subject to:

- A. Existing and future rights-of-way in favor of the public or third parties for highways, roads, railroads, telephone, telegraph and electrical transmission lines, canals, laterals, ditches, flumes, siphons, and pipelines over, under, and across the land. Reclamation shall furnish to FWP, upon its request, a list of all existing land use authorizations on Reclamation Land within Freezout Lake Wildlife Management Area covered by this Agreement within 30 days of such request.
- B. The right of properly authorized officers, assignees, agents, employees, licensees, permittees, and lessees of Reclamation to enter Reclamation Land within Freezout Lake Wildlife Management Area without charge for the purpose of enforcing, protecting, and exercising the rights reserved to Reclamation and protecting the rights vested in those not party to this Agreement.
- C. Reservations relative to construction material, mining, and the leasing of the mineral estate to third parties pursuant to Article 25, hereof.

7. LAND MANAGEMENT PLAN.

Within two years of execution of this Agreement, it's encouraged that FWP submit for Reclamation's review and approval, a Land Management Plan which will describe activities proposed by FWP for management of Reclamation Land in Freezout Lake Wildlife Management Area for the term of this Agreement. Annual work will be generally described in the Land Management Plan. Emergency maintenance, such as repair of vandalism, will occur on an as needed basis. Reclamation reserves the right to approve or disapprove any actions identified in FWP's management plan. Upon completion of an approved plan this Agreement shall be subject to the provisions contained therein. FWP will conduct all environmental and cultural resource related compliance associated with the Land Management Plan.

FWP will notify Reclamation if annual plans vary significantly from the Land Management Plan. Reclamation will have an opportunity to review and comment on modified plans that directly affect Reclamation lands.

8. THIRD PARTY CONTRACTS AND PERMITS.

- A. FWP may enter into basic service contracts without prior review and written approval of Reclamation. Such contracts may include, but not necessarily be limited to, services for normal management, operations, and maintenance of the area, including, but not limited to, trash removal and disposal, toilet pumping, etc. FWP may also enter into contracts, without prior review and written approval, for services to accomplish wildlife management objectives. These services will be consistent with wildlife management objectives and can include, but are not limited to, livestock grazing and farming.
- B. All third-party contracts and permits issued by FWP will be subject to applicable Federal laws and regulations, Reclamation policy, Executive orders, directives and standards, and applicable terms of this agreement. The term of such contracts shall not extend beyond the term of this Agreement. Said contracts will also provide that in the event of the termination of this Agreement, Reclamation may determine to stand in the stead of FWP as grantor for the remainder of the term of said contract; provided however, in the event of such termination, Reclamation may, at any time thereafter, terminate said contract by giving the contractor or permittee 90 calendar days written notice thereof.
- C. No contracts or permits entered into or granted by FWP shall purport to transfer or convey any interest in the land or any public facilities; the right given to FWP to enter into such contracts and permits shall not be construed as a right to grant or convey any interest in land. Such contracts and permits include, but are not limited to easements, leases, and other documents that may transfer Federal interest.
- D. FWP shall not issue, or allow to be issued, directly or through the actions of its permittees, permits or other forms of agreements that allow for the development of privately-owned exclusive uses such as cabin sites, mobile home or travel trailer sites, private boat docks, or private road access.
- E. Reclamation reserves the right and is responsible for the issuance of outgrants for land use (special use permits, licenses, crossing agreements, etc.) and resource management within the Federal Estate. Reclamation will, prior to approval, provide FWP a copy of any outgrant application for review and comment. FWP shall review any such application and make written comment to Reclamation's designated representative within 45 calendar days from receipt. Reclamation's designated representative will consider the written comments of FWP during the approval process. Comments received will be considered and, if applicable, incorporated into any outgrant. Outgrants shall contain reasonable measures to protect public recreation facilities, and reclaim or repair damages, which may occur to public recreation facilities.

9. FEES AND CHARGES.

FWP shall not charge user fees, other than statewide fishing and hunting fees, standard FWP commercial use and group use permits on Reclamation Land within Freezout Lake Wildlife Management Area.



10. VISITOR USE

FWP will furnish to Reclamation's representative, upon request, a summary of the recreation related use and/or resources on Reclamation Land within Freezout Lake Wildlife Management Area for the previous calendar year.

11. EXAMINATION OF RECORDS.

The Comptroller General of the United States or any duly authorized representatives, or the Secretary of the Interior or duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers, and records of FWP involving transactions related to this Agreement.

12. FACILITY DEVELOPMENT.

- A. It is the intent of Reclamation and FWP to develop and enhance the natural resources and public recreation opportunities on Reclamation Land within Freezout Lake Wildlife Management Area. Site planning, public recreation facility construction and resource enhancement shall be accomplished on a mutually agreeable, incremental basis as user demands require and/or as fund availability permits. All development on Reclamation Land shall be in accordance with approved planning documents and the Freezout Land Management Plan, as described under Article 7.
- B. New developments or improvements may include water and irrigation systems, green belts, hiking paths, camping and day-use areas, roads and parking areas, upland field maintenance, the planting of trees or wildlife food plots, dredging of bays/ditches, the installation of boat docks, signage, etc.

13. LIABILITY OF CONTRACTORS AND PERMITTEES.

- A. FWP shall require all contractors and permittees to carry such insurance as is customary among prudent operators of similar businesses under comparable circumstances. FWP will furnish to Reclamation's representative, upon request, proof of insurance records.
- B. FWP shall require all contractors and permittees to assume full responsibility for any and all liability arising out of, or connected with contractor or permittee activities on Federal lands, and FWP shall require contractors and permittees to agree to indemnify and hold harmless Reclamation, its officers, agents, and employees, from any and all such liability.

14. TITLE TO LAND, IMPROVEMENTS, AND RESTORATION.

- A. Upon commencement of this Agreement, FWP shall keep a current and accurate inventory of such structures and improvements (including construction and/or purchase costs) on Reclamation Land within Freezout Lake Wildlife Management Area that were installed or constructed solely at its own expense, or by a contractor, and as may be requested by Reclamation, and FWP shall provide Reclamation an inventory of such structures and improvements.

- B. For a period of 120 days after termination of this Agreement, or such longer period as may be determined by Reclamation, FWP shall have the privilege of selling, salvaging, and/or removing those structures or facilities installed or constructed by FWP at its sole costs or expense, exclusive of those structures or facilities paid for or partially paid for from funds expended by Reclamation. After the expiration of such period, title to all remaining such FWP-financed structures or facilities shall automatically vest in the United States and be under the jurisdiction of Reclamation. If Reclamation does not want the buildings; they shall be removed by FWP. The right or responsibility of FWP to remove such structures or facilities shall include the obligation of FWP to restore the land occupied by such structures to its original condition as determined to be satisfactory to Reclamation.

**15. REVIEW OF ADMINISTRATION.**

- A. Reclamation may make inspections of Reclamation Land within Freezout Lake Wildlife Management Area at any time. However, Reclamation shall provide FWP a five-day advance notice of its intentions in order to include FWP in such inspections.
- B. The parties hereto will meet as needed, when requested by either, to review and inspect the management, operation and maintenance of Reclamation Land within Freezout Lake Wildlife Management Area. The purpose of these reviews and inspections is to ensure that management, operation, and maintenance procedures are adequate and consistent with the purposes of this Agreement and to identify and correct deficiencies and problems. Said reviews will include, but are not necessarily limited to: health and safety; appropriate use of Federal land, land interests and resources; and inspections of facilities and operations, including third party or commercial permits, and basic service contracts. FWP agrees to correct all deficiencies within specified time requirements established by Reclamation.

**16. DEBRIS AND WASTE REMOVAL.**

FWP shall provide litter control and trash removal on Reclamation Land within Freezout Lake Wildlife Management Area to the satisfaction of Reclamation and to the extent necessary to maintain the area in a safe condition suitable for public recreation use. FWP shall properly dispose of all waste, discarded or abandoned items, and debris generated by its management, and operation and maintenance activities. Said waste, debris, etc., shall be disposed of or recycled in a properly permitted disposal or recycling facility outside of the Reclamation Land boundaries.

**17. SAFETY AND UNAUTHORIZED USE.**

- A. FWP shall, within the limits of its statutory authority, adopt and enforce rules and regulations for recreational use of Reclamation Land within Freezout Lake Wildlife Management Area as are necessary and appropriate to protect the health and safety of the recreating public; for the preservation of law and order; and, for the protection of Reclamation Land within Freezout Lake Wildlife Management Area resources and facilities. Said rules and regulations shall, to the extent possible, be consistent with applicable Federal and state laws, regulations, and policies currently in place or as may be adopted in the future.

- B. The primary responsibility for identifying and preventing unauthorized uses or encroachment on Reclamation Land within Freezout Lake Wildlife Management Area belongs to FWP. FWP shall, in cooperation with Reclamation, take all reasonable measures necessary to identify, investigate, and resolve incidents of unauthorized use or encroachment. These measures include any legal actions necessary to prevent or prosecute such unauthorized use. Reclamation hereby assigns to FWP the right to bring action in FWP's name in order to protect each party's interests and carry out their responsibilities in connection therewith. Resolution of boundary disputes shall be the responsibility of Reclamation. FWP shall notify Reclamation's designated representative of boundary disputes or unauthorized incidents immediately upon discovery.
- C. Reclamation shall authorize FWP, and FWP shall enforce, provisions found in FWP Regulation Chapter 23, Regulation Governing Uses of Land and Waters Acquired or Administered by FWP.

18. TERMINATION.

This Agreement shall terminate and all rights of FWP hereunder shall cease:

- A. At the expiration of this Agreement.
- B. FWP may terminate its obligations under this Agreement by giving Reclamation one-year advance written notice. If the Agreement is terminated as the result of such written notice, all rights and obligations of FWP under this Agreement shall cease at the end of said period, and FWP shall immediately return all management control to Reclamation.
  - i. In the event that FWP fails to provide Reclamation one-year notice, by fax, email or letter, Reclamation shall take over administration of Reclamation Land within Freezout Lake Wildlife Management Area, and FWP shall reimburse Reclamation for administrative costs incurred during a six-month transition period, not to exceed \$3,000.
- C. As may be provided for in Article 4.

19. DEFAULT.

If Reclamation finds that FWP has violated any portion of this Agreement, Reclamation shall:

- A. Provide written notice of the violation to FWP and such opportunity to cure as is appropriate. Generally, FWP shall be afforded not more than 60 days after receipt of written notice to cure the violation. In the event a violation constitutes a clear and present danger to the public's health, safety and welfare, Reclamation shall immediately notify FWP, in the most expeditious manner possible, of such violation and such opportunity to cure the danger as is warranted by the violation. Subsequent written notice of the violation shall also be sent to FWP. In the case of a violation constituting a clear and present danger to the public's health, safety and welfare, Reclamation may, at its sole discretion, elect to immediately cure the violation. In

such case, Reclamation shall bill FWP for all costs, not to exceed \$5,000, for curing the violation.

- B. If FWP has not cured the violation by the end of the period identified pursuant to Article 19.A., Reclamation shall notify FWP that it is in default of the terms of this Agreement, and that if the violation is not cured within 30 calendar days from the date of default notice, the Agreement, either in whole or in part, shall be terminated for cause. If FWP fails to meet such requirement by the end of the 30-day period, the Agreement, either in whole or in part, shall be terminated and FWP shall immediately vacate or remove any and all personal property. If Reclamation makes a determination that said personal property is necessary for the future operation of Reclamation Land within Freezout Lake Wildlife Management Area, Reclamation shall have the right to purchase from FWP said personal property at its fair market value.

## 20. ACCIDENT REPORTING.

FWP shall investigate, within its statutory authority, and cooperate in the investigation by the agency having jurisdiction, all accidents involving death, serious injury or property damage, hazardous material spills, or other incidents of a serious nature on Reclamation Land within Freezout Lake Wildlife Management Area, and shall take immediate steps to control the incident, if possible, and/or notify Reclamation in accordance with Article 28.A. FWP shall make an initial verbal report on the accident to Reclamation's Montana Area Office within 48 hours of knowledge of the incident. For all accidents or incidents, FWP shall, within its statutory authority and within five calendar days of the verbal notice, provide Reclamation copies of written reports describing the nature of the death, spill, injury or damage, the date of occurrence, the cause if appropriate or know, and if appropriate, the estimated costs of repair, and the estimated date of repair. Hazardous material spills shall be reported to the appropriate agencies as required by federal, state and local laws, rules and regulations as well as to Reclamation.

## 21. VARIATION IN RESERVOIR WATER LEVEL.

Reclamation reserves the right to discharge or waste irrigation water from Project facilities as needed into Freezout Lake. FWP reserves the right to vary the water level as necessary for WMA purposes. FWP agrees that Reclamation shall not be held responsible for FWP losses or damages, either financial (lost revenues, incomes, profits, etc.) or to fixed assets (docks, boat launch ramps, buoys, buildings, materials, etc.), incurred during the construction, operation, or maintenance of the Project.

## 22. CONSUMPTIVE USE OF WATER BY THE FWP.

- A. FWP may, subject to State of Montana water law and water availability, use water from reservoir supplies, as has been acquired or retained for the operation of public recreation facilities and for livestock watering within Freezout Lake Wildlife Management Area.
- B. Reclamation does not warrant the quality of reservoir water as to its suitability either for domestic purposes or for human consumption. FWP shall not issue water contracts, or water rights, to any person, corporation, company, entity, or facility to

extract water from any Reclamation Land within Freezout Lake Wildlife Management Area.

23. CERTIFICATION OF NONSEGREGATED FACILITIES.

FWP certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. FWP agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Agreement. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, public recreation and entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. FWP agrees that (except where it has obtained identical certification from proposed subcontractors for specific time periods) it shall obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it shall retain such certification in its files.

NOTE: The penalty for making false statements in offers is prescribed in 17 U.S.C. 1001.

24. CONSTRUCTION MATERIALS AND MINING.

There is reserved to Reclamation the right to remove from Reclamation Land within Freezout Lake Wildlife Management Area materials necessary for construction, operation, and maintenance of the Project works and facilities, the right to prospect for, extract, and carry on the development for oil, gas, coal, and other minerals, and the right to issue leases or permits to prospect for oil, gas, or other minerals on said lands under the Act of February 25, 1920 (41 Stat. 437), and acts amendatory thereof or supplementary thereto, and the Act of August 7, 1947 (61 Stat. 913). FWP shall be consulted and Reclamation shall give full consideration to the FWP's interest concerning any proposal prior to the exercise of these rights on Reclamation Land within Freezout Lake Wildlife Management Area.

25. RISK - DAMAGES.

- A. Reclamation and FWP will each be responsible and liable for the negligent acts or omissions of their respective officers, agents, employees, or assigns to the extent provided by law. Nothing in this Agreement will be construed as admission of fault or liability, and nothing will limit the defenses and immunities legally available to each party. Neither FWP nor the State of Montana waives sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to State laws.
- B. Within 30 days of receipt by either party of any claim for liability arising from actions within the scope of this Agreement, the party receiving the claim shall notify the other party of such claim and provide a copy of the claim to the other party, if it is in written form. Nothing in this Article shall be construed to limit the right of either

party to assert such affirmative defenses and file such cross complaints as may be appropriate in relation to any claim affecting the liability of such party.

## 26. PROTECTION OF RESOURCES.

### A. Environmental Protection

- i. FWP shall comply with the provisions of all applicable Federal, State and local laws and regulations, and Reclamation policies and instructions, pertaining to the protection of the public, employees, natural and cultural resources within the area of operation.

### B. Hazardous Materials/Waste Management

- i. FWP shall not allow contamination or pollution of Federal lands, waters or facilities for which FWP has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.
- ii. FWP shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that shall be used, produced, transported, or stored on or in Federal lands, waters or facilities.
- iii. "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., and the regulations promulgated pursuant to that Act.
- iv. Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, FWP shall initiate any necessary emergency measures to protect health, safety and the environment and shall report to Reclamation within 24 hours of such discovery the full details of the event and actions taken.
- v. Violation of any of the provisions of this sub-Article, as determined by Reclamation, may constitute grounds for termination of this Agreement. Such violations require immediate corrective action by FWP and shall make FWP liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.
- vi. FWP agrees to include the provisions contained in paragraphs i.-v. of this sub-Article in any subcontract, third-party contract, or permit they may issue pursuant to this Agreement if the contractor or permittee will be using or handling any hazardous materials.
- vii. Reclamation agrees to provide information necessary for FWP, using reasonable diligence, to comply with the provisions of this sub-Article.

C. Weed Control

- i. All herbicides on Reclamation Land shall be used in accordance with the current registration, label direction, or other directives regulating their use and with applicable Reclamation policy and directives and standards. Applicators will meet applicable State training or licensing requirements. Records maintenance shall be in accordance with applicable State requirements and such records shall be furnished to Reclamation as per State requirements, if any, or on request by Reclamation.
- ii. Any equipment, tools, and machines used for herbicide application shall be in good repair and suitable for such use. Equipment shall be calibrated prior to the spraying season.
- iii. Mixing, disposal, and cleaning shall be done where herbicide residues cannot enter storm drains, sewers, or other non-target areas.
- iv. FWP shall initiate any necessary measures for containment and cleanup of herbicide spills. Spills shall be reported to Reclamation as per state requirements, if any.
- v. Aerial application of herbicide is allowed with prior notification to Reclamation.
- vi. FWP agrees to include the provisions contained in paragraphs i-vi of the sub-Article in any contract for herbicide application on Reclamation Land at Freezout Lake.

D. Pest Control

- i. FWP shall not permit the use of any pesticides (defined as pesticides other than herbicides) on Reclamation Land without prior written approval by Reclamation. FWP shall submit to Reclamation for approval an Integrated Pest Management Plan for the prescribed area 30 days in advance of pesticide application.
- ii. All pesticides shall be used in accordance with the current registration, label direction, or other directives regulating their use and with applicable Reclamation policy and directives and standards. Applicators will meet applicable State training or licensing requirements. Records maintenance shall be in accordance with applicable State requirements and such records shall be furnished to Reclamation on a yearly basis prior to the spraying season.
- iii. Any equipment, tools, and machines used for pesticide application shall be in good repair and suitable for such use. Equipment shall be calibrated prior to the spraying season and as deemed necessary by Reclamation.
- iv. Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas.
- v. FWP shall initiate any necessary measures for containment and cleanup of pesticide spills. Spills shall be reported to Reclamation within 24 hours with full details of the actions taken.
- vi. Aerial application of pesticides is prohibited without prior written approval by Reclamation.

- vii. FWP agrees to include the provisions contained in paragraphs i.-vi. of this sub-Article in any contract for pesticide application on Reclamation Land within Freezout Lake Wildlife Management Area.

E. Historic, Cultural and Archaeological Values

- i. FWP shall take reasonable and necessary precautions to protect and preserve any and all antiquities or other objects of archaeological, paleontological, cultural, historic, or scientific interests on Federal lands. Objects under consideration include but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and other artifacts. Should such sites or objects, or evidence of sites or objects, be discovered FWP shall immediately suspend any and all work involving the area in question, make a reasonable effort to protect such discovery, and advise Reclamation of the existence of such discovery. FWP shall immediately provide an oral notification to Reclamation of the discovery of human remains on Reclamation lands. FWP shall forward a written report of their findings to Reclamation within 48 hours by certified mail. FWP shall cease activity, stabilize, and protect such discoveries until authorized to proceed by Reclamation. Protective and mitigation measures specified by Reclamation shall be the responsibility of FWP. Reclamation shall have the area inspected within 10 working days to determine its historical significance and the appropriate actions to follow (salvage, test excavation, etc., and resumption of construction). Cost of any salvage work will be borne by the Reclamation. All objects salvaged from Federal lands are the property of the United States Government and will be turned over to Reclamation for disposition.

27. NOTICES.

- A. Any notice, demand, or request required or authorized by this Agreement to be given or made to or upon Reclamation shall be deemed properly given or made if delivered by mail, to the Area Manager, Montana Area Office, P.O. Box 30137 Billings, MT. 59107.

Any notice, demand, or request required or authorized by this Agreement to be given or made to or upon the FWP shall be properly given or made if delivered by mail, to the FWP Fish, Wildlife and Parks: Attn: Region 4 Wildlife Program Manager, 4600 Giant Springs Road, Great Falls, MT 59405

- B. The designation of the person to or upon who any notice, demand, or request is to be given or made, or the address of any such person, may be changed at any time by notice given in the same manner as provided in this section for other notices.

28. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS.

The expenditure of any funds and the performance of any work by Reclamation or by FWP as provided for by the terms of this Agreement, which may require an appropriation by the respective legislative bodies, or the allotment of funds, shall be contingent upon such appropriation or allotment being made. The failure of either of such legislative



bodies to appropriate funds or the absence of any allotment of funds shall not impose any liability on either of the parties hereto.

29. MODIFICATION OF AGREEMENT.

- A. This Agreement may be modified, amended, or superseded at any time during its term upon mutual written agreement by the parties hereto.
- B. If any portion of this Agreement is rendered null and void as a result of applicable laws, regulations, Executive Orders, Reclamation Policy, court rulings, etc., all remaining portions of the Agreement will remain in full force and effect, provided the voided portion or portions do not affect the primary purposes of this Agreement.

30. OFFICIALS OR EMPLOYEES NOT TO BENEFIT.

No member or delegate to Congress or Commissioner, and no officer, agent, or employee of the Department of the Interior, or official or employee of FWP shall be admitted to any share or part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

U.S Department of Interior  
Bureau of Reclamation  
Montana Area Office

State of Montana  
Montana Fish, Wildlife and Parks

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Steve Davies, Area Manager  
Bureau of Reclamation

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Martha Williams, Director  
Montana Fish, Wildlife and Parks

## EXHIBIT A

### RECLAMATION LAND WITHIN FREEZOUT LAKE WILDLIFE MANAGEMENT AREA

#### Township 22 North, Range 3 West

Section 6, NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$	120 acres
Section 7, SW $\frac{1}{4}$ , NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$	440 acres
Section 8, NW $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$	160 acres
Section 17, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$	360 acres
Section 18, ALL	640 acres
Section 19, ALL	640 acres
Section 20, W $\frac{1}{2}$	320 acres
Section 29, NW $\frac{1}{4}$	160 acres
Section 30, ALL	640 acres

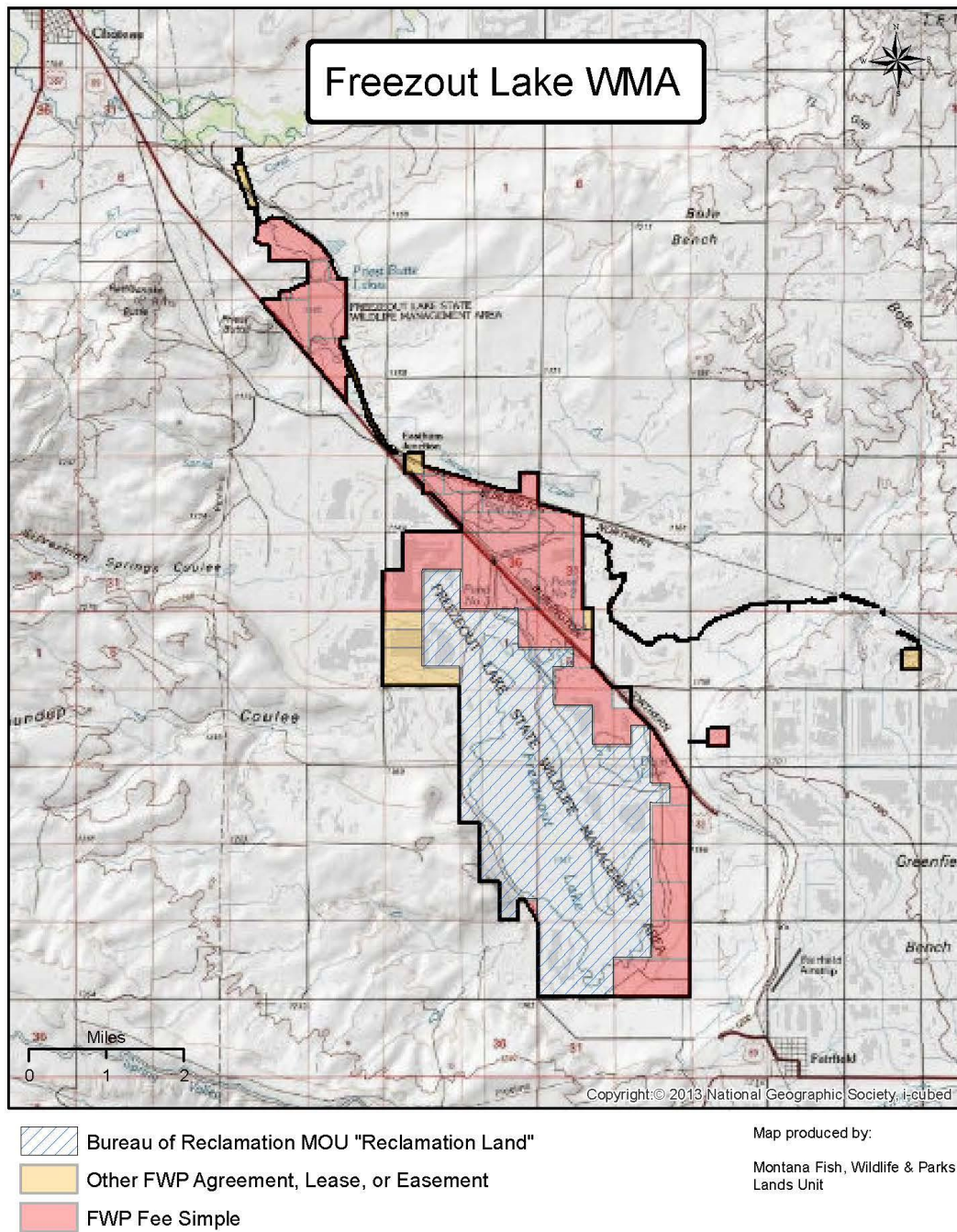
#### Township 22 North, Range 4 West

Section 1, W $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , S $\frac{1}{2}$	560 acres
Section 2, NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$	240 acres
Section 12, ALL	640 acres
Section 13, N $\frac{1}{2}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$	600 acres
Section 24, NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$	360 acres

#### Township 23 North, Range 4 West

Section 35, SE $\frac{1}{4}$	160 acres
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Total Acres	6,040
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## **EXHIBIT B**

### **RECLAMATION LAND-USE STIPULATION**

- A. There is reserved to Reclamation, its successors or assigns, the prior right to use any of the lands herein described to construct, operate, and maintain all structures and facilities including, but not limited to, canals, waste ways, laterals, ditches, roadways, electrical transmission lines, dams, dikes, reservoirs, pipelines, telephone and telegraph lines, communication structures generally, substations, switch yards, power plants and any other appurtenant irrigation and power structures and facilities, without any payment made by the Bureau of Reclamation or its successors for such right.
- B. FWP further agrees that if the construction of any or all of such structures and facilities across, over or upon said lands should be made more expensive by reason of the existence of improvements or works of FWP thereon, such additional expense is to be estimated by the Secretary of the Interior, whose estimate is to be final and binding upon the parties hereto. Within 30 days after demand is made upon FWP for payment of any such sums, FWP will make payment thereof to Reclamation or any of its successors or assigns constructing such structures and facilities across, over, or upon said lands. As an alternative to payment, and if approved by Reclamation, FWP, at its sole cost and expense and within time limits established by the Government, may remove or adapt facilities constructed and operated by it on said lands to accommodate the aforementioned structures and facilities of Reclamation.
- C. FWP shall bear the cost to the Government of any costs occasioned by the failure of FWP to remove or adapt its facilities within the time limits specified.
- D. There is also reserved to Reclamation the right of its officers, agents, and employees, at all proper times and places freely to have ingress to, passage over, and egress from all of said lands for the purpose of exercising, enforcing, and protecting the rights reserved herein.
- E. FWP further agrees that Reclamation, its officer, agents, and employees and its successors and assigns shall not be held liable for any damage to FWP's improvements or works by reason of the exercise of the rights here reserved; nor shall anything contained in this paragraph be construed as in any manner limiting other reservations in favor of Reclamation contained in this Agreement.

## **EXHIBIT C**

### **ENVIRONMENTAL and ARCHEOLOGICAL REQUIREMENTS**

- A. No artificial modification of the environment shall be undertaken without environmental compliance completed. In reviewing such artificial modification, Reclamation may require FWP to provide an Environmental Assessment which it will use to determine the actions necessary to meet the potential requirements of the National Environment Policy Act.
- B. FWP shall plan, construct, operate, maintain, and manage all structures and facilities on the premises herein described so as to minimize adverse environmental consequences. In so doing, FWP shall give particular consideration to alleviating potentially harmful effects on, but not limited to, landscape, soils, water, air, mineral, timber, or population or other animate resources.
- C. FWP shall correct or modify any pollution of soil, air, or water and deterioration of living or inanimate resources caused by or resulting from exercise of the privileges granted herein in accordance with rules, regulations, and directives of the Secretary of the Interior, including, but not limited to, aesthetic qualities of the environment, and in compliance with all Federal laws. Increased cost will not justify noncompliance with environmental quality controls required by Reclamation.
- D. FWP shall comply fully with all applicable Federal laws, orders, and regulations and the laws of the State of Montana, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants, and concerning the pollution of the air with respect to radioactive materials or other pollutants.

In planning for projects, FWP shall comply with requirements of the National Historic Preservation Act (NHPA) or equivalent State of Montana cultural resource laws. Further, any cultural resource surveys and/or NHPA related compliance material shall be prepared by FWP and submitted to Reclamation at least 120 days prior to any on the ground work beginning; so Reclamation can fulfill the agency's NHPA obligations. Upon request, FWP shall provide Reclamation all necessary cultural resource related surveys or data.

## **EXHIBIT D**

### **EQUAL OPPORTUNITY REQUIREMENTS**

During the performance of this contract, the Contractor agrees as follows:

- A. FWP will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. FWP will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. FWP agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Reclamation setting forth the provisions of this Equal Opportunity clause.
- B. FWP will, in all solicitations or advertisements for employees placed by or on behalf of FWP state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, or national origin.
- C. FWP will send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding, a notice to be provided by Reclamation, advising the labor union or worker's representative of FWP's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. FWP will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. FWP will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by Reclamation and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of FWP noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and FWP may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rules, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. FWP will include the provisions of paragraphs A.-F. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be

binding upon each sub-contractor or vendor. FWP will take such action with respect to any subcontract or purchase order as Reclamation may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, that in the event FWP becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by Reclamation, FWP may request Reclamation to enter into such litigation to protect the interests of Reclamation.

## **EXHIBIT E**

### **TITLE VI, CIVIL RIGHTS ACT OF 1964**

- A. FWP agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to Department of the Interior regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the regulation, no person in Reclamation shall, on the ground of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which FWP receives financial assistance from Reclamation and hereby gives assurance that it will immediately take any measures to effectuate this Agreement.
- B. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to FWP by Reclamation, this assurance obligates FWP, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates FWP for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates FWP for the period during which the Federal financial assistance is extended to it by Reclamation.
- C. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to FWP by Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which was approved before such date. FWP recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and Agreements made in this assurance, and that the Reclamation shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on FWP, its successors, transferees, and assignees.



## EXHIBIT F

### SUMMARY OF REPORTING REQUIREMENTS

Submittals from the Department are required during the term of the contract. Required submittals are as follows:

<i><b>RSN</b></i>	<i><b>Clause Or Section Title</b></i>	<i><b>Submittals Required</b></i>	<i><b>Due date or delivery time</b></i>
1	Land Management Plan	Written plan proposing plans and activities for the term of the agreement	Within 2 year of execution of agreement
2	Recreation Use Data Report	Report consisting of any information collected by the Department on public recreational use	Upon Reclamation's request
3	Accident Reporting	Copies of written reports describing the incident after verbal notice (48 hours)	Within 5 calendar days of verbal notice
4	Weed Control	Records as per State regulations. Any spills that occur	Upon Reclamation's request and/or per State requirements
5	Pest Control	Prior approval needed. Records as per State regulations. Any spills that occur	Upon Reclamation's request and/or per State requirements
6	Historic, Cultural, and Archaeological Values	Written report of findings after verbal notice	Within 48 hours of finding
7	Inventory of Structures and Improvements	An inventory of structures and improvements by FWP on Reclamation Land within Freezout Lake Wildlife Management Area	Upon commencement of agreement and updated upon occurrence